



6560-50

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2010-0476; FRL-9495-6]**

**Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) submittals from the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Maryland has made submittals addressing the infrastructure requirements for the 1997 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. This action approves portions of those submittals.

**DATES:** Effective Date: This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2010-0476**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website.

Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA.

## **I. Background**

On September 12, 2011 (76 FR 56130), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland submittals that provide the infrastructure elements specified in CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. The formal submittals by the State of Maryland dated July 27, 2007 and November 30, 2007 addressed the section 110(a)(2)

requirements for the 1997 8-hour ozone NAAQS; the submittals dated April 3, 2008 and April 16, 2010 addressed the section 110(a)(2) requirements for the 1997 PM<sub>2.5</sub> NAAQS; and the submittals dated April 16, 2010 and July 21, 2010 addressed the section 110(a)(2) requirements for the 2006 PM<sub>2.5</sub> NAAQS.

## **II. Summary of SIP Revision**

The submittals referenced in the Background section of this rulemaking action address the infrastructure elements specified in CAA section 110(a)(2). These submittals provide for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS. The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID number **EPA-R03-OAR-2010-0476**. No public comments were received on the NPR.

## **III. Final Action**

EPA is approving the State of Maryland submittals that provide the infrastructure elements specified in CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS.

This final rule is limited to the infrastructure elements which were subject to EPA's completeness

findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 (73 FR 16205) and the 1997 PM<sub>2.5</sub> NAAQS dated October 22, 2008 (73 FR 62902). These findings pertained only to whether the submissions were complete, pursuant to section 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions. With respect to this permit program, on November 29, 2005 (70 FR 71612), EPA promulgated a change that made nitrogen oxides (NO<sub>x</sub>) a precursor for ozone in the part C regulations at 40 CFR 51.166 and 40 CFR 52.21. In the March 27, 2008 completeness findings, EPA determined that Maryland failed to submit a SIP revision to its part C Prevention of Significant Deterioration (PSD) permit program to fully incorporate NO<sub>x</sub> as a precursor for ozone. EPA will take separate action on the portions of section 110(a)(2)(C) and (J) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS as they relate to Maryland's part C PSD permit program.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172. This action does not cover these specific elements. This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. The 110(a)(2)(D)(i)(I) requirements have been addressed by separate findings issued by EPA (70 FR 21147, April 25, 2005 and 75 FR 32673, June 9, 2010), and a federal implementation plan (FIP) (75 FR 45210, August 2, 2010). The 110(a)(2)(D)(i)(II) portion of these requirements are addressed through 110(a)(2) SIP submittals that EPA will take separate

action on.

#### **IV. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to Maryland’s section 110(a)(2) infrastructure SIP submittals for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 14, 2011

W. C. Early, Acting  
Regional Administrator,  
Region III.

40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding entries at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, Section 110(a)(2) Infrastructure Requirements for the 1997 PM<sub>2.5</sub> NAAQS, and Section 110(a)(2) Infrastructure Requirements for the 2006 PM<sub>2.5</sub> NAAQS. The amendments read as follows:

§ 52.1070      Identification of plan.

\*      \*      \*      \*      \*

(e)\* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*      *      *      *      *      *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS	Statewide	7/27/07 11/30/07	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM <sub>2.5</sub> NAAQS	Statewide	4/3/08 4/16/10	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K),



<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
				(L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM <sub>2.5</sub> NAAQS	Statewide	4/16/10 7/21/10	[Insert Federal Register publication date] [Insert page number where the document begins]	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2011-30299 Filed 11/23/2011 at 8:45 am; Publication Date: 11/25/2011]